Division Bench

CF/1100/C (1)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

5381

Writ Petition No. /2006

PETITIONERS

1) Durg Sahkari Vipnan Samiti Maryadit Durg, through its President Yashwant Kumar Harmukh S/o- late Shri Kanhaiyalal Harmukh Aged about 66 years R/o- District Durg (C.G.)

P.R. No. 52 53/06
Presented by Shri Bhuvan Verma
dated 30/9/06

2) Balod Vipnan Sahkari Samiti Balod through its President Mohan Lal Patel S/o- late Shri Udayram Patel, Aged about 59 years, R/o. District Durg (C.G.)

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3) Sahkari Vipnan Samiti Maryadit Bemetara, through its president Manager Vijay Singh Bhuwal S/o- Shyam Singh Bhuwal Aged about 52 years. R/o- District Durg (C.G.)

OATH COMMISSIONER
APARNA MALVIYA
CG-2073/96
Bilaspur Chhattisgarh

4) Kishan Sahkari Vipnan Samiti Maryadit Gundardehi, through its Assistant Godown Keeper, Doman Singh Markande, S/o- Parsariram Markande, Aged about 50 years. R/o- District Durg (C.G.)

5) Vipnan Sahkari Samiti Dondi Lohara, through its Manager, Puranik Ram Sonwani S/o- Braj Lal Sonwani Aged about 38 years R/o- District Durg (C.G.)

6) Sahkari Vipnan Samiti Maryadit Gurur, Through its Accountant Visnuram Sahu, S/o- Udayram Sahu Aged about 52 years R/o- District Durg (C.G.)

7) Vipnan Sahkari Samiti Maryadit Dhamdha, Through its Assistant Manager, Surendra Singh Rajput S/o- Shri Bahadur Singh Aged about 48 years R/o- District Durg (C.G.)

8) Vipnan Sahkari Samiti Patan Through its Assistant Manager, Beldhar Prasad Sahu, S/o- Shri Sukhdev Ram Sahu, Aged about 32 years R/o- District Durg (C.G.)

OATH COMMISSIONER APARNA MALVIYA CG-2873/06 Bilaspur Chhattisgarh

9) Adarsh Vipnan Sahkari Samiti Maryadit Dondi, Through its Assistant Manager, J.B.Singh Churendra, S/o- Sampat Lal Churendra, Aged about 30 years R/o- District Durg (C.G.)

10) Durg Jila Thok Upbhokta Bhandar Maryadit Durg through its Upper Division Clerk Rajendra Kumar Tamrakar S/o- Horilal Tamrakar Aged about 45 years R/o- District Durg (C.G.)

11) Bhilai Thok Upbhokta Bhandar Bhilai through its go-down incharge Rajendra Prasad Tiwari S/o- Chandra Shekhar Tiwari Aged about 46 years R/o- District Durg (C.G.)

VERSUS

RESPONDENTS

1) State of Chhattisgarh Through the Principal Secretary Department of Food and Civil Supplies D.K.S. Bhawan, Mantralaya Raipur (C.G.)

2) Chhattisgarh State Civil Supplies Corporation through Managing Director Bal Aashram Parisar, Kacheri Chowk, Raipur (C.G.)

OATH COMMISSIONER APARNA MALVIYA CG-[illegible]/36 Bilaspur Chhattisgarh

3) District Manager Chhattisgarh State Civil Supplies Corporation Limited District Durg (C.G.)

4) Registrar Cooperative Societies State
of Chhattisgarh
Raipur (C.G.)

5) Collector,
Durg (C.G.)

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OF CERTIORARI AND MANDAMUS ETC AND FOR OTHER SUITABLE WRITS AND DIRECTIONS

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

Coram :- **Hon'ble Shri Vijay Kumar Shrivastava &**
Hon'ble Shri Dhirendra Mishra, JJ.

Writ Petition No.5381 of 2006

Durg Sahkari Vipnan Samiti Maryadit, Durg & Others

Versus

State of Chhattisgarh & Others

And

Five Other Connected Writ Petitions

Order for consideration

Sd/-
V.K.Shrivastava
Judge

Hon'ble Shri Dhrinendra Mishra, J

Sd/-
Dhirendra Mishra
Judge

Sd/-
Vijay Kumar Shrivastava
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

Coram :- **Hon'ble Shri Vijay Kumar Shrivastava &**
Hon'ble Shri Dhirendra Mishra, JJ.

Writ Petition No.5381 of 2006

Petitioners :

1. Durg Sahkari Vipnan Samiti Maryadit, Durg, through its President Yashwant Kumar Harmukh, S/o Late Shri Kanhaiyalal Harmukh, Aged about 66 years, R/o District Durg (CG).

2. Balod Vipnan Sahakari Samiti, Balod, Through its President Mohan Lal Patel, S/o Late Shri Udayram Patel, Aged about 59 years, R/o District Durg (CG).

3. Sahkari Vipnan Samiti Maryadit, Bemetara, Through its President Manager Vijay Singh Bhuwal, S/o Shyam Singh Bhuwal, Aged about 52 years, R/o District Durg (CG).

4. Kishan Sahkari Vipnan Samiti Maryadit, Gundardehi, through its Assistant Godown Keeper, Doman Singh Markande, S/o Parsariram Markande, Aged about 50 years, R/o District Durg (CG).

5. Vipnan Sahkari Samiti Dondi Lohara, Through its Manager Puranik Ram Sonwani, S/o Brij Lal Sonwani, Aged about 38 years, R/o District Durg (CG).

6. Sahkari Vipnan Samiti Maryadit, Gurur, Through its Accountant Visnuram Sahu, S/o Udayram Sahu, Aged about 52 years, R/o District Durg (CG).

7. Vipnan Sahakari Samiti Maryadit, Dhamdha, Through its Assistant Manager, Surendra Singh Rajput, S/o Shri Bahadur Singh, Aged about 48 years, R/o District Durg (CG)

8. Vipnan Sahakari Samiti, Patan, Through its Assistant Manager Beldhar Prasad Sahu, S/o Shri Sukhdev Ram Sahu, Aged about 32 years, R/o District Durg (CG).

9. Adarsh Vipnan Sahakari Samiti Maryadit, Dondi, Through its Assistant Manager J.B. Singh Churendra, S/o Sampat Lal Churendra, Aged about 30 years, R/o District Durg (CG).

10. Durg Jila Thok Upbhokta Bhandar Maryadit, Durg, Through its Upper Division Clerk Rajendra Kumar Tamrakar, S/o Horilal Tamrakar, Aged about 45 years, R/o District Durg (CG).

11. Bhilai Thok Upbhokta Bhandar, Bhilai, Through its Godown Incharge Rajendra Prasad Tiwari, S/o Chandra Shekhar Tiwari, Aged about 46 years, R/o District Durg (CG).

Versus

Respondents :

1. State of Chhattisgarh, Through: the Principal Secretary, Department of Food and Civil Supplies, D.K.S. Bhawan, Mantralaya, Raipur (CG).
2. Chhattisgarh State Civil Supplies Corporation, Through Managing Director, Bal Aashram Parisar, Kachhari Chowk, Raipur (CG).
3. District Manager, Chhattisgarh State Civil Supplies Corporation Limited, District Durg (CG).
4. Registrar, Co-operative Societies, State of Chhattisgarh, District Raipur (CG).
5. The Collector, Durg (CG).

Present :- Shri Kanak Tiwari, Sr. Advocate with Shri Matin Siddique, counsel for the petitioners.

Shri Prashant Mishra, Addl. Advocate General for the State/respondents No.1, 4 & 5.

Shri V.R. Tiwari, counsel for respondents No.2 & 3.

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Writ Petition (PIL) No.6161 of 2006

Petitioner : Domendra Singh Bhedia, S/o Late Khilendra Bhedia, Aged about 56 years, Former Chairman – Kendriya Jila Sahkari Bank Maryadit, Durg, R/o Balod, District Durg (CG).

Versus

Respondents :

1. State of Chhattisgarh, Through: the Principal Secretary, Department of Food and Civil Supplies, D.K.S. Bhawan, Mantralaya, Raipur (CG).
2. Chhattisgarh State Civil Supplies Corporation, Through Managing Director, Bal Aashram Parisar, Kachhari Chowk, Raipur (CG).
3. District Manager, Chhattisgarh State Civil Supplies Corporation Limited, Durg, District Durg (CG).
4. Collector (Food and Civil Supplies), Durg, District Durg (CG).

Present :- Shri Manindra Shrivastava, Sr. Advocate with Shri Amrito Das, counsel for the petitioner.

Shri Prashant Mishra, Addl. Advocate General for the State/respondents No.1 & 4.

Shri V.R. Tiwari, counsel for respondents No.2 & 3.

Writ Petition No.2275 of 2006

Petitioners :

1. Durg Marketing Cooperative Society Ltd., Durg, A Cooperative Society registered under the provisions of the M.P.(C.G) Cooperative Societies Act, 1960 vide registration No.529, through Chairman Yashwant Kumar Harmukh, Aged about 65 years, S/o Late Shri K.L. Harmukh, R/o Dhamdha Naka, District Durg (CG).
2. Dhamdha Marketing Cooperative Society Ltd., Dhamdha, A Cooperative Society registered under the provisions of the M.P.(C.G) Cooperative Societies Act, 1960 vide registration

No.DR/DRG/51, through Chairman Baburam Chandel, Aged about 53 years, S/o Late Shri D.R. Chandel, R/o Main Road, Dhamdha, District Durg (CG).

3. Gurur Marketing Cooperative Society Ltd., Gurur, A Cooperative Society registered under the provisions of the M.P.(C.G) Cooperative Societies Act, 1960 vide registration No.DR/DRG/54, through Vishnu Ram Sahu, Aged about 52 years, S/o Late Shri U.R. Sahu, R/o Gurur Marketing Society, District Durg (CG).

4. Balod Marketing Cooperative Society Ltd., Balod, A Cooperative Society registered under the provisions of the M.P.(C.G) Cooperative Societies Act, 1960 vide registration No.631, through Manager U.R. Sahu, Aged about 48 years, S/o Shri Gajadhar Ram Sahu, R/o Balod, District Durg (CG).

5. Dondi Lohara Marketing Cooperative Society Limited, A Cooperative Society registered under the provisions of the M.P.(C.G) Cooperative Societies Act, 1960 vide registration No.07, through Manager P.R. Sonwani, Aged about 38 years, S/o Shri Brijlal Sonwani, Vipnan Sahkari Samiti, Dondi Lohara, District Durg (CG). .

6. Cooperative Marketing Society Ltd., Manendragarh, District Koriya, A Cooperative Society registered under the provisions of the M.P.(C.G) Cooperative Societies Act, 1960 vide registration No.BR-BSP/02, through Manager Prakash Kumar Sinha, Aged about 53 years, S/o Late Shri Laxmi Prasad, R/o Purani Basti, Manendragarh, District Korea (CG).

Versus

Respondents :

1. State of Chhattisgarh, Through: the Secretary, Department of Food and Civil Supplies, D.K.S. Bhawan, Mantralaya, Raipur (CG).

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2. The Collector, Durg (CG).

3. The Sub Divisional Officer, Manendragarh, District Koriya (CG).

4. The Food Officer, District Koriya (CG).

Present :- Shri Kanak Tiwari, Sr. Advocate with Shri Matin Siddique, counsel for the petitioners.

Shri Prashant Mishra, Addl. Advocate General for the State/respondents No.1 to 4.

Writ Petition No.6530 of 2006

Petitioners :

1. Paralkot Co-operative Marketing Society Ltd., Though : Subhash Sarkar, S/o Late Shri Shailesh Sarkar, Aged about 52 years, Member of Paralkot Sahkari Vipnan Sanstha Maryadit, Pakhanjore, Kanker, District Kanker (CG).

2. Nani Gopal Biswas, S/o Shri Sharad Biswas, Aged about 45 years, Working as Salesman in the Paralkot Sahkari Vipnan Sanstha Maryadit, Pakhanjore, Kanker, District Kanker (CG).

Versus

Respondents :

1. State of Chhattisgarh, Through: the Secretary, Department of Food and Civil Supplies, D.K.S. Bhawan, Mantralaya, Raipur (CG).

2. The Collector, District Kanker (CG).

3. The Sub Divisional Officer (Revenue), Pakhanjur, District Kanker (CG).

4. The Food Officer, District Kanker (CG).

Present :- Shri Kanak Tiwari, Sr. Advocate with Shri Matin Siddique, counsel for the petitioners.

Shri Prashant Mishra, Addl. Advocate General for the State/respondents No.1 to 4.

Writ Petition No.5281 of 2006

Petitioner : Sarangarh Sahkari Vipnan Samiti Maryadit, Sarangarh, District Raigarh (CG).
Through its Manager Shaligram Patel, S/o Goverdhan Patel Aged about 30 years, R/o village Dharmabhata, Post Gudheli, Tahsil Sarangarh, District Raigarh (CG).

Versus

Respondents :

1. State of Chhattisgarh, Through: the Principal Secretary, Department of Food and Civil Supplies, D.K.S. Bhawan, Mantralaya, Raipur (CG).
2. Chhattisgarh State Civil Supplies Corporation, Through Managing Director, Bal Aashram Parisar, Kachhari Chowk, Raipur (CG).
3. District Manager, Chhattisgarh State Civil Supplies Corporation Limited, District Raigarh (CG).
4. Registrar, Co-operative Societies, State of Chhattisgarh, District Raipur (CG).
5. The Collector, Raigarh (CG).

Present :- Shri Kanak Tiwari, Sr. Advocate with Shri Matin Siddique, counsel for the petitioner.

Shri Prashant Mishra, Addl. Advocate General for the State/respondents No.1, 4 & 5.

Shri V.R. Tiwari, counsel for respondents No.2 & 3.

Writ Petition No.5265 of 2006

Petitioner : Sunder Prathmik Upbhokta Sahakari Bhandar Maryadit, Ward No.22, Sunder Nagar, Camp – 1, Bhilai, District Durg, (CG).
Through : Manager Laxmi Narayan Agrawal, S/o Shri Ram Kumar Agrawal, Aged about 30 years, R/o Indira Chowk, Supela, Bhilai, District Durg (CG).

Versus

Respondents :

1. State of Chhattisgarh, Through: the Principal Secretary, Department of Food and Civil Supplies, D.K.S. Bhawan, Mantralaya, Raipur (CG).
2. Chhattisgarh State Civil Supplies Corporation, Through Managing Director, Bal Aashram Parisar, Kachhari Chowk, Raipur (CG).
3. District Manager, Chhattisgarh State Civil Supplies Corporation Limited, District Durg (CG).
4. Registrar, Co-operative Societies, State of Chhattisgarh, District Raipur (CG).
5. The Collector, Durg, District Durg (CG).

Present :- Shri Parag Kotecha, counsel for the petitioner.

Shri Prashant Mishra, Addl. Advocate General for the State/respondents No.1, 4 & 5.

Shri V.R. Tiwari, counsel for respondents No.2 & 3.

ORDER

(Delivered on 9th March, 2007)

The following order of the Court was delivered by **Vijay Kumar Shrivastava, J.**

All these writ petitions under Article 226 of the Constitution of India relate to challenge the validity of policy decision for transportation of food grains to fair price shops which abstains marketing societies or consumer stores to carry both the works together of lead agency and fair price shops. Constitutional validity of imposition of condition whereby maximum limit of three fair price shops has been incorporated in Public Distribution System (Control) Order, 2004 (for short "Order 2004") for allotment of shops to various agencies. Issuance of public notice inviting tenders by the State Civil Supplies Corporation Ltd., for transportation of food grains,

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and vires of clause 9(1)(2)(3)(4) of the Order, 2004 as substituted vide notification dated 21-3-2006. Having common questions for decision all these petitions are taken together, and are being disposed of by this common order.

2) The Essential Commodities Act, 1955 (for short, "the Act, 1955") has been enacted by the Union of India with the object of equitable distribution and supply of essential commodities to the public at large. On being delegated the State is also competent to enact such statutory orders under Section 3 of the Act, 1955 for attaining the avowed purposes of the Act, 1955 including distribution of essential commodities to the ration card holders of public at large through fair price shops. For the first time, erstwhile State of M.P. enacted M.P. Foodstuffs Distribution (Control) Order, 1960 (for short, "order 1960) under which Government fair price shops were established to run by appointment of retailers. In the year 1981 State of M.P. framed a scheme known as M.P. (Foodstuffs) Civil Supply Public Distribution Scheme 1981 (for short, "Scheme 1981) whereby allowed preference in allotment of fair price shops to Co-operative Societies. In order to achieve the objectives, the Registrar, Co-operative Societies, M.P., vide circular/order dated 02/05/1981 fixed criteria of Co-operative Societies who would be eligible to run the fair price shops and thereby authorized Primary Credit Co-operative Societies and their branches, Large Aadimjati Multipurpose Co-operative Societies (LAMPS), Marketing Co-operative Societies and their branches and Wholesale Consumer Co-operative Societies and their branches. Pursuant to it, fair price shops were withdrawn from the private individuals and allotted to these societies.

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3) Pursuant to Scheme, 1981, the Registrar, Co-operative Societies, issued a well considered circular No. 6152/4736/29/2/81, dated 12-08-1981 and started a new scheme of appointing the lead society which society would undertake the task of receiving essential commodities at par and on behalf of the fair price shops and would further store and supply such commodities to the fair price shops, Primary Co-operative Marketing Societies were selected and to promote their work, they were accorded financial assistance. Some of the Primary Co-operative Credit Societies were also appointed as lead society to perform the said work. The societies authorized with work of lead agency continued their work uninterruptedly since long.

4) In the year 2001 another scheme called as Chhattisgarh Public Distribution System (Control) Scheme 2001 (for short, "the Scheme 2001") was enforced and private individuals were also inducted in the business. In the year 2004 State of Chhattisgarh enacted the statutory order known as Chhattisgarh Public Distribution System (Control) Order 2004 (for short "Control Order 2004") and that was enforced from 23/12/2004. Some of the provisions were brought within the dimension of scrutiny by the judicial review and this Court by a common order in the case of **Raghuveer Singh Gond Vs. Union of India and others** in W.P.No.445/2005, declared some of the provisions as ultra vires and also issued certain directions. In consonance with those observations and directions, the State of Chhattisgarh in order to revalidate the law amended the relevant provisions vide amendment order No. F 13-8/Food/2004/29, Raipur, dated 21-03-2006.

5) This Court in **Raghuveer Singh Gond (supra)** declared allotment of fair price shops to Primary Credit Cooperative Societies ultra vires and

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further directed that only those out of other Co-operative Societies can be allotted fair price shops under the Order 2004 which are permitted under the Chhattisgarh Co-operative Societies Act, 1960 (for short, "the Act, 1960") or Chhattisgarh Swayatta Sahakarita Adhiniyam, 1999, to run the fair price shops, but the State vide amendment did not rectify the defect in toto, on the other hand, imposed a ceiling of maximum of three shops to be allotted to any authorized agency.

6) On 08/11/2005 a meeting under the Chairman-ship of Secretary, Department of Food & Civil Supplies, was convened wherein it was deliberated that where all kinds of institutions would fail including the Chhattisgarh State Civil Supplies Corporation (for short, "the Corporation"), then such lead agencies' work may be got executed by the Marketing Co-operative Societies and by no other societies. Pursuant to it and amendment brought in Control Order, 2004, the authorities started asking the Marketing Societies who are carrying both the works i.e., lead agency work as well as fair price shop to choose either of them and also started asking to select only three fair price shops, if they have more than that also Government and authorities issued circular, letter and order in consonance with policy and amended provisions.

7) Feeling aggrieved with the amendment incorporated, vide notification dated 21/03/2006 whereby Primary Credit Co-operative Societies have been allowed to continue running the fair price shops and Primary Agriculture Credit Societies have been authorized as agencies to run fair price shops, the ceiling of maximum of three fair price shops the policy decision taken by the State which curtailed the lead agency work of Marketing Society and to compel them to opt either to do the work of lead agency or to do the work of fair price shop, validity of all these

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rules/directions and amendment itself have been questioned, with a further relief that suitable direction be issued to respondent/State not to formulate any policy with regard to Public Distribution System or essential commodities for purposes of any statutory order made or otherwise contrary to judicial sanction and time tested policy of the State to deploy the services of the Co-operative Societies as lead societies.

8) Respondents opposed the petition, inter alia, on the ground that the State Government is the sole depository for framing policies in public interest for proper and effective distribution of essential commodities to the fair price shops so that it may ultimately reach to the hands of persons entitled for it. State is also empowered and authorized to regulate its own policy and to make addition/alteration and also to completely change the policy for the above stated purpose and object. The policy decision unless is absurd or is violative of any constitutional provision or is wholly improper and irrational to the extent that the policy cannot be interfered with by the Courts.

9) Marketing societies have been chosen to work as lead agency only by executive orders because of their proximity to the godowns in which essential commodities are stored. They have no legal right to trade any essential commodities meant for distribution through fair prices shops. State cannot be directed not to frame public policy in a particular manner. It is the duty of the State Government to make the essential commodities timely available in the fair price shops for distribution to ration card holders, but the involvement of multiple agencies for lifting the food grains from Chhattisgarh State Civil Supplies Corporation Centers to Fair Price Shops creates unnecessary delay in supply of foodgrains to fair price shops for that reason State decided to provide foodgrains to fair price

shop through door step delivery by Chhattisgarh State Civil Supplies Corporation and accordingly issued necessary instructions. The implementation of public distribution system needs constant monitoring and desired changes, if necessary, based upon the experience of the State Government to ensure timely supply of foodgrains to the fair price shops for onwards distribution to the ration card holders. Public distribution system requires change in policy sometimes by way of necessity and sometimes for experiment to evolve a better mechanism to achieve the object. Thus to achieve excellence in implementation of Public Distribution System (for short "PDS") continuous reforms is needed, therefore, no individual or society can claim any fundamental or statutory right to continue to in the PDS and its allied sphere.

10) By adopting door step delivery system the Government is trying to eliminate one intermediary and to hand over the work carried out by lead agencies to a Government owned statutory Corporation who shall be solely responsible for distribution of essential commodities to the Fair price shops without requiring the shopkeepers to make payment of the value of the articles in advance. This can only be done when a Government agency is made responsible for delivery. Earlier to 1985 in absence of nodal agencies, cooperative societies were appointed as lead agencies for distribution under PDS. The supply of foodgrains by Chhattisgarh State Civil Supplies Corporation to fair price shops under door step delivery system will reduce the involvement of multiple agencies and ensure time supply of PDS commodities to fair price shops. Timely availability of foodgrains for public distribution at Fair price shops level is the best guarantee against its diversion.

11) The Government of India is regularly insisting the States to take pro-active steps to curb leakages and diversion of foodgrains meant for PDS. Vide letter dated 4-10-2006 Government of India has instructed all the State Governments to ensure door step delivery of foodgrains to fair price shops and to avoid diversion or any malpractices. For streamlining the PDS, Government of India instructed that the number of intermediaries should be kept to the minimum. Therefore, the State Government has decided to remove the multiple agencies involved for transportation of foodgrains to fair prices shops. Door step delivery of foodgrains will be carried out by the Chhattisgarh State Civil Supplies Corporation. For online tracking the movement of vehicles engaged in the transportation of PDS foodgrains Global Positioning System (for short "GPS") device will be used. Normally delay in supply of foodgrains occurs due to late payment of the amount of foodgrains by the Fair Price Shops to the Chhattisgarh State Civil Supplies Corporation. To overcome this problem State Government has decided to supply foodgrains to fair price shops in advance by the Corporation without waiting for the payment by the shopkeepers. The State Government has right to select and appoint any agency as lead agency for timely and smoothly supply of foodgrains to fair price shops as an administrative and policy decision, therefore, the marketing societies or other societies cannot claim for lead agency work as their fundamental rights. The amendment of Order, 2004 issued vide notification dated 21-3-2006 is within the legislative competence of the Government of Chhattisgarh. The State Government has power to limit the maximum number of three fair price shops, which can be allotted to any agency, mentioned in the Order, 2004.

12) Petitioners contention is that the decision taken in a meeting is not a delegated legislation and cannot be termed as a decision of the State in public policy. Even otherwise the said decision does not fall within the limb of public policy. In order to support their contention, they relied upon the judgment rendered by Hon'ble the Supreme Court in the matter of **Ashok Lanka and another vs. Rishi Dixit and others,** reported in **(2005) 5 SCC 598**. Para 55 of the judgment reads as below:

> **"55.** The Commissioner of Excise issued a circular letter dated 14-2-2005 which power evidently he did not possess in terms of Section 7 of the Act. Although the State may delegate its power to the Commissioner of Excise, such a delegation cannot be made in relation to the matters contained in the rule-making power of the State. The matters which are, therefore, outside the purview of the Rules only could be the subject-matter of delegation in favour of the Commissioner of Excise. The Commissioner of Excise is a statutory authority. He is bound to exercise his power only within the four corners of the Act or the Rules framed thereunder and not dehors the same."

He further relied upon the judgment rendered by Hon'ble the Supreme Court in the matter of **State of Rajasthan and others vs. Basant Nahata,** reported in **(2005) 12 SCC 77**. Para 66 of the judgment reads as below:

> "66. The contention raised to the effect that this Court would not interfere with the policy decision is again devoid of any merit. A legislative policy must conform to the provisions of the constitutional mandates. Even otherwise a policy decision can be subjected to judicial review. (See Cellular Operators Assn. of India v. Union of India and Clariant International Ltd. v. Securities & Exchange Board of India.)"

13) Learned counsel for the petitioner further contended that circular issued by administrative authorities against the operation of the statutory rules has no force and therefore, the circular issued by the authorities herein asking the marketing societies to opt either of the two businesses

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i.e. lead agency or fair price shop and to select three fair price shops is illegal. He relied on the judgment of Hon'ble the Supreme Court in the case of **State of Maharashtra vs. Jagannath Achyut Karandikar**, reported in **1989 Supp (1) SCC 393**, Para 7 is quoted below :

> "7. The aforesaid Rules expressly provided power to the Government to grant more chances for passing the examination in any individual case or in class of cases. Under the 1955 Rules, the Government preserved power to dispense with, or relax the requirements of any rule regulating "the conditions of service of Government servants; or of any class thereof". In the exercise of this power, the Government could dispense with or relax the operation of any rule, if it causes undue hardships in any particular case. It is needless to state that this power includes the power to relax the conditions prescribed for promotion since promotion is a condition of service. There is no restriction as to the exercise of the power or discretion. The High Court, however, has observed that the scope of this power has been constrained by the circular dated 15-1-1962. The circular states that the 1955 Rules permitting relaxation cannot be utilized to relax the rules which regulate conditions of service. It further states that the scope of the Rules should be limited only to matters relating to traveling allowance, leave, etc. But this appears to be an exercise in vain. The circular is an executive instruction whereas the 1955 Rules are statutory since framed under the proviso to Article 309 of the Constitution. The Government could not have restricted the operation of the statutory rules by issuing the executive instruction. The executive instruction may supplement but not supplant the statutory rules. The High Court was in error in ignoring this well-accepted principle."

14) Learned counsel for the petitioners canvassing preferential criteria in favour of co-operative societies contended that for lead agency business societies are entitled for preference and also societies cannot be restricted to opt retaining maximum number of three shops and placed his reliance upon the decision of Hon'ble the Supreme Court in the case of **Madhya Pradesh Ration Vikreta Sangh Society and others vs. State of Madhya Pradesh and another**, reported in **(1981) 4 SCC 535**, the Court held thus :

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"The wider concept of equality before the law and the equal protection of laws is that there shall be equality among equals. Even among equals there can be unequal treatment based on an intelligible differentia having a rational relation to the objects sought to be achieved. However, if governmental action disclosed arbitrariness, it would be liable to be invalidated as offending against Article 14.

Consumers' cooperative societies form a distinct class by themselves. Benefits and concessions granted to them ultimately benefit persons of small means and promote social justice in accordance with the directive principles. There is an intelligible differentia between the retail dealers who are nothing but traders and consumers' cooperative societies. The formulation of the Scheme does not exclude the retail traders from making an application for appointment as agents. The Scheme only envisages a rule of preference. The governmental action in giving preference to consumers' cooperative societies, though drastic, was an inevitable step taken in the interests of the general public and cannot be construed to be arbitrary, irrational or irrelevant. Preferential treatment given to cooperative societies in the matter of allotment of fair price shops. Nor does the impugned scheme does not confer arbitrary or uncanalised power on the Collector in the matter of appointment as agents for the purpose of running fair price shops. The Scheme lays down detailed guidelines regulating the manner of grant or refusal of such applications.

The scheme also does not abridge Article 19 (1) (*g*). The petitioner who are retail dealers, are free to carry on business as wholesale or retail dealers in foodgrains by taking out licenses under the Madhya Pradesh Foodgrains (Licensing) Order, 1964. There is no fundamental right in any one to be appointed as an agent of a fair price shop under a Government Scheme.

The question whether fair price shops under a Government Scheme should be directly run by the Government through the instrumentality of consumers' cooperative societies as its agents or by retail dealers to be appointed by the Collector under clause 3 of the Control Order, is essentially a matter of policy with which the Court is not concerned. "

15) On the contrary, respondents contended that right to carry on trade or business has to be determined from the stand point of interest of the general public and not from the stand point of interest of the person on whom restriction imposed. To support his contention he relied upon the

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judgment of Hon'ble Supreme Court in the case of **Krishnan Kakkanth Versus Government of Kerala and others**, reported in **1997 (9) SCC 495**, in which the Court observed thus :

> "A. Constitution of India – Arts. 19(1)(g), (6) and 298 – Right to carry on trade or business – Reasonableness of restriction- To be determined from the standpoint of general public interest and circumstances relating to the trade or business in question and not from the standpoint of interest of the person on whom the restriction imposed even if restriction operates on him harshly – Factors to be considered in determining infringement of right under Art.19(1)(g) – A citizen has no fundamental right to insist on Govt. or any other individual to do business with him- Govt. entitled to enter into business with any person or class of persons to the exclusion of others- While doing so, if Govt. does not prohibit others to carry on their business, Art. 19(1)(g) not violated – Govt. circular directing that farmers or agriculturists of certain districts opting to receive financial assistance under a govt. scheme for purchase of pumpsets would be obliged to purchase the pumpsets from approved dealers of the Govt. – Held, circular not violative of private dealers' right under Art.19(1)(g).
>
> B. Constitution of India – Arts. 14 and 298 and 226, 136- Arbitrariness – Public policy – Judicial review – Scope – Unless govt. policy is demonstrably arbitrary, capricious, irrational, discriminatory or violative of constitutional or statutory provisions, it cannot be struck down by court – Wisdom of the public policy irrelevant – Govt. circular directing that farmers opting to receive financial assistance for purchase of pumpset would be obliged to purchase the same only from approved govt. dealers – Held, circular neither arbitrary, nor discriminatory – Public policy."

16) Learned counsel for the State to bring their action within the edifice of public policy further relied upon the decision of Hon'ble Supreme Court rendered in the case of **Rattan Chand Hira Chand vs. Askar Nawaz Jung** (Dead) by LRs **and Others**, reported in **(1991) 3 SCC 67**. Para 17 of the judgment is quoted below :

> "17. I am in respectful agreement with the conclusion arrived at by the High Court. It cannot be disputed that a contract which has a tendency to injure public

> interests or public welfare is one against public policy. What constitutes an injury to public interests or welfare would depend upon the times and climes. The social milieu in which the contract is sought to be enforced would decide the factum, the nature and the degree of the injury. It is contrary to the concept of public policy to contend that it is immutable, since it must vary with the varying needs of the society. What those needs are would depend upon the consensus value judgments of the enlightened section of the society. These values may sometimes get incorporated in the legislation, but sometimes they may not. The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed."

17) Learned counsel for the State further contended that on legitimate expectation relief cannot be granted if it is likely to harm to larger public interest and to support to his contention he relied upon the decision of Hon'ble Supreme Court in the case of **Hira Tikkoo vs. Union Territory, Chandigarh and others**, reported in **(2004) 6 SCC 765**. Para 22 is quoted below :

> "**22.** In public law in certain situations, relief to the parties aggrieved by action or promises of public authorities can be granted on the doctrine of "legitimate expectation" but when grant of such relief is likely to harm larger public interest, the doctrine cannot be allowed to be pressed into service. We may usefully call in aid the legal maxim: "*Salus populi est suprema lex: regard for the public welfare is the highest law*." This principle is based on the implied agreement of every member of society that his own individual welfare shall in cases of necessity yield to that of community. His property, liberty and life shall

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under certain circumstances be placed in jeopardy or even sacrificed for the public good."

18) For appreciating the validity of policy adopted by the Government and directions issued by the concerned authorities in furtherance thereof, relevant portion of the decision, circulars are extracted as below :

Relevant portion of meeting dated 8-11-2005 reads as below :

"सचिव महोदय द्वारा चर्चा में यह कहा गया कि अभी तक लीड का कार्य किन संस्थाओं के माध्यम से कराया जाना है, इसके लिए कोई विशेष नीति शासन कार्य किन किन संस्थाओं से कराया जाना उपयुक्त होगा। चर्चा उपरान्त निर्णय लिया गया कि फैक्स/लेम्पस जिन – जिन जगहों पर लीड संस्था के रुप में कार्यरत है उन्हें स्थापित रखा जावे तथा अन्य स्थानों पर नागरिक आपूर्ति निगम को लीड का कार्य सौंपा जावे। यह भी निर्णय लिया गया कि किसी कारणवश किसी जगह पर फैक्स/लैम्पस एवं नागरिक आपूर्ति निगम दोनो लीड का कार्य करने में असमर्थ रहते है, तो वहां विपणन सहकारी संस्था को लीड का कार्य दिया जा सकता है। इनके अतिरिक्त अन्य किसी संस्था से लीड का कार्य नहीं कराया जावे।"

Letter dated 10-4-2006 issued by the Secretary, Department of Food, Civil Supplies and Consumer Forum, Raipur, imposing restriction on carrying Fair Price Shops as well as work of lead agency jointly reads as below :

"छत्तीसगढ शासन
खाद्य नागरिक आपूर्ति एवं उपभोक्ता संरक्षण विभाग
मंत्रालय, रायपुर

दिनांक :– 142/खाद्य/2006 रायपुर, दिनांक

प्रति,

समस्त कलेक्टर
छत्तीसगढ

विषयः– सार्वजनिक वितरण प्रणाली के अंतर्गत लीड एजेंसियों के निर्धारण विषयक।

संदर्भः– विभाग का पत्र कमांक 1553/खाद्य/2005, दिनांक 30 मई, 2005, पत्र कमांक 3149/खाद्य/2005, 18 अक्टूबर 2005, पत्र कमांक 653/सचिव/खाद्य/2006, दिनांक 28.02.2006

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कृपया विषयांतर्गत संदर्भित पत्रों का अवलोकन करें, जिसके माध्यम से सार्वजनिक वितरण प्रणाली के खाद्यान्न एवं अन्य आवश्यक वस्तुओं के उठाव, परिवहन एवं आपूर्ति हेतु लीड एजेंसियों के निर्धारण के साथ–साथ सार्वजनिक वितरण प्रणाली के खाद्यान्न के दुरुपयोग पर नियंत्रण हेतु समय–समय पर आवश्यक निर्देश जारी किए गए है।

2. वर्तमान में राज्य के 08 जिलों में नागरिक आपूर्ति निगम द्वारा तथा कई जिलों में लैम्पस एवं प्राथमिक कृषि साख समितियों द्वारा लीड एजेंसियों का कार्य किया जा रहा है। इसके अतिरिक्त राज्य के कतिपय जिलों में उपभोक्ता भण्डारों अथवा विपणन समितियों द्वारा उचित मूल्य दुकानों के संचालन के साथ–साथ लीड एजेंसियों का कार्य भी संपादित किया जा रहा है। विभाग द्वारा लिये गये निर्णयानुसार निर्देशित किया जाता है कि एक ही संस्था के द्वारा लीड तथा दुकान संचालन दोनों कार्य नहीं कराया जायेगा। अन्य सहकारी समितियां, यथा–उपभोक्ता भण्डार, विपणन समितियां आदि द्वारा यदि लीड एजेंसियों के साथ–साथ उचित मूल्य दुकानों के संचालन का कार्य भी कर रही है तो, ऐसी अन्य सहकारी समितियों को लीड एजेंसी के कार्य से पृथक कर दिया जावे तथा लीड एजेंसी का कार्य नागरिक आपूर्ति निगम, लेम्पस, प्राथमिक कृषि साख समितियों या उचित मूल्य दुकानों का संचालन नहीं करने वाली अन्य सहकारी समितियों को सौंपा जावे।

3. कृप्या उपरोक्त को दृष्टिगत रखते हुए आपके जिले में लीड एजेंसियां एवं उचित मूल्य दुकान संचालन एजेंसियों के रुप में कार्यरत अन्य सहकारी समितियों की तत्काल समीक्षा की जाकर निर्देशानुसार आवश्यक कार्यवाही करते हुए विभाग को शीघ्र अवगत करावें।

कार्यालय कलेक्टर (खाद्य शाखा) जिला दुर्ग

पृ. कं. /सा. वि. प्र./06 दुर्ग, दि. 22.4.06

प्रतिलिपि :– (1) अनुविभागीय अधिकारी (रा.) सर्व, जि. दुर्ग,
(2) सहायक खाद्य अधिकारी (सर्व) जिला दुर्ग,
की ओर सूचनार्थ एवं आवश्यक कार्यवाही
हेतु अग्रेषित
(3) उप पंजी. सही. समितियां दुर्ग

(एम के राउत)
सचिव
छत्तीसगढ शासन
खाद्य नागरिक आपूर्ति एवं
उप.संर. विभाग

खाद्य नियंत्रक
वास्तु – कलेक्टर, दुर्ग"

19) It is manifest that earlier in the year 1981 for transportation of foodgrains from Food Corporation of India to Fair Price Shops, Civil Supplies Corporation as statutory body was not in existence. Therefore, in order to run the fair price shops under Scheme, 1981, Food & Civil Supplies Department opt to allow the transportation work to some of the Primary Cooperative Societies titling those societies as lead societies and

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the responsibility was handed over to Primary Marketing Society. Even those societies were accorded some financial assistance by the Government. Evidently that was an arrangement under executive instructions. Those arrangements were not made under any statutory rule or scheme.

20) Marketing society has been defined under the Cooperative Societies Act, 1960 (for short "Act, 1960"), which reads as below :

> "**Marketing Society** – means a society formed for the purpose of marketing agricultural or other produce and including among its objects, the supply of the requisites of such production."

It appears that the original work of marketing society is to marketing agricultural or other produce. The business of transportation is not one of the original works of marketing society.

21) Under Order 2004, provisions have been made for lifting, storage, transportation and distribution in clause 5 of the Order, which reads as below :

> "**5. Lifting, Storage, Transportation and Distribution :**
>
> (1) The allocations made by the Central Government or by the State Government for distribution under the Public Distribution System shall not be diverted for any other purpose.
>
> (2) The Director shall, on getting allocation of food grains from the Central Government, issue district wise allocation orders authorizing Chhattisgarh State Civil Supplies Corporation limited to lift food grains from FCI or from stock of food grains under the decentralized procurement within ten days of the receipt of allocation orders made by the Government of India.
>
> (3) The Food Corporation of India (FCI) or Chhattisgarh State Civil Supplies Corporation Limited shall ensure physical delivery of food grains of fair average quality within two weeks of demand with specific amount.

(4) In the District headquarters, the Food Controller/ Food Officer and Sub Divisional Officer for other areas shall issue fair price shop wise allocation orders. The copy of the allotment order shall be compulsorily given to the Gram Panchayat and local bodies.

(5) While making monthly allocation to the fair price shop, the allotment authority shall take into account the balance stock, if any lying undistributed with the FPS owners for the next month allocation.

(6) The Collector, District Manager of the Chhattisgarh State Civil Supplies Corporation Limited and other designated authority of Collector will ensure further delivery of food grain, sugar and salt to the Fair Price Shop with in the first week of the month for which allocation is made.

(7) Before making the payment to the FCI the representative of Chhattisgarh State Civil Supplies Corporation Limited and Food Corporation of India shall conduct joint inspection of the stocks of food grains intended for issue to ensure that the stocks conform to the prescribed quality specifications. Similarly before making the payment to the Chhattisgarh State Civil Supplies Corporation Limited the representative of Chhattisgarh State Civil Supplies Corporation Limited and representative of District Collector shall conduct joint inspection of the stock of food grains intended for issue to ensure that the stock conform to the prescribed qualities specifications.

(8) The FCI shall issue to the Chhattisgarh State Civil Supplies Corporation Limited Stack-wise sealed samples of the stocks of food grains supplies to them for the distribution under Public Distribution System at the time of dispatch. Similarly Chhattisgarh State Civil Supplies Corporation Limited shall issue to the lead and link cooperative society and Fair Price Shop stack-wise sealed samples of the stocks of food grains supplies to them at the time of dispatch.

(9) The District Collector shall ensure that full quantity of food grain, sugar and salt lifted by Chhattisgarh State Civil Supplies Corporation

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Limited reaches their godowns and in turn to the Fair Price Shops within time.

(10) The designated authority of Collectors, District Manager, Chhattisgarh State Civil Supplies Corporation Limited and concerned agencies engaged in transportation of all essential commodities covered under the PDS including food grains, kerosene, sugar, and salt shall ensure that stocks of essential commodities under the Public Distribution System, as issued from the Chhattisgarh State Civil Supplies Corporation Limited godowns and godowns of other agencies dealing with kerosene are not replaced by stocks of inferior quality during storage transit or any other stage,

(11) Director food shall prescribe the format of sale register, stock register and ration card register and proper system of monitoring of Fair Price Shops.

(12) The ration cardholder shall be entitled to draw essential commodities from a Fair Price Shop within her/his eligibility. It is not necessary for the card holder to lift the entire quantity of food grains/ other commodity that she/he is entitled for in one installment but can do so in a number of installments.

(13) The ration cardholder shall be entitled to draw food grains and other essential commodities of a maximum of previous two months from a Fair Price Shop, which was not lifted by him."

From bare reading of the above provisions, it is evident that the Corporation has to lift the foodgrains from the FCI and has a duty cast on it to transport and deliver the essential commodities under the PDS to fair price shops so that the ration card holder may without any delay lift/purchase foodgrains in accordance with the Rules. The Rules do not exclusively authorizes or allows preferential rights to the lead societies to perform the said transportation work. When law made Corporation responsible for transportation of commodities under the PDS, the decision was taken in meeting whereby PACS, LAMPS who are working as lead societies were allowed to continue their work and for remaining places

responsibility has been fastened on the Corporation and if those societies and the Corporation are unable at any place to do the work of lead agency, in that case marketing societies were permitted to work as lead agency.

22) The tender notice floated by the Corporation does not restrict marketing society to take part in transportation work, therefore, when for supply of foodgrains to persons living below the poverty line in due time some devise has been adopted which does not abstain marketing societies to take part in the transportation of commodities, those NIT cannot be said to be in violation of any right of equality or right of business of the societies.

23) Undisputedly Government of India has been emphasizing the need to take pro-active steps to curb leakages and diversions of foodgrains under TPDS and the Central Government has directed the State Government to introduce door step delivery and tracking the movement of foodgrains up to the fair price shop level streamlining intermediaries in the TPDS and so on.

24) Union Government to achieve those goals has also emphasized that Global Positioning System on the transporting should be done and in order to door step delivery of the foodgrains the method of delivery at the fair price shop level through State Corporation be made so that responsibility can be fixed in case of diversion. From the return filed by the State, it is clear that in order to meet the requirement of Union Government and to curb leakage and diversion of foodgrains State Government has adopted Global Positioning System in supply of foodgrains and has also made responsible State Corporation for supply of foodgrains to fair price shops.

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25) Here in the instant case, exclusion of marketing societies, as lead agency does not violate any rule or law. Even in order to curb the malpractices the State has adopted to take lead agency work with PACS, LAMPS and Civil Supplies Corporation, in case all these bodies fail to take the work from marketing society. Except society and the Corporation no one has been allowed to do the lead agency work. If marketing societies, which were earlier, engaged in lead agency are still willing to compete with others their rights have not been snatched by any of the authorities. To save the interest of public at large that too poor persons who are living below the poverty line if any formula has been devised under the guidelines of the Union Government and are implemented which are in the public interest that apart which do not violate any rules or law or not in violation of Articles 14 and 19 of the Constitution that cannot be said to be against the public policy.

26) So far as imposing a condition that societies, which are engaged in both the works i.e., lead agency as well as fair price shop should be removed from lead agency work. This decision also does not in any way be condemned. Naturally if a society is engaged in fair price shop there may be possibility of irregularities or delay if the same society is also doing the business of lead agency. Even otherwise, if that society is asked to remain busy in one work and other work is taken away from it and allotted to another authorized society that does not in any way deprive the legal rights of any of the societies and cannot be held to be against the public policy.

27) We have gone through all the aforesaid decisions rendered by Hon'ble the Apex Court and considered all the facts and circumstances, thereafter we are of considered view that the decision taken by the State

authorities as above is not violative of Articles 14 or 19 of the Constitution and is not against the public policy, therefore, the same is not required to be interfered with.

28) Learned counsel for the petitioners contended that imposing restriction for keeping only three shops by an agency is virtually taking away their right of trade and is against the Article 19 of the Constitution. On the other hand, learned counsel for the respondents opposed the said contentions.

29) State Government vide notification dated 21-3-2006 amended clause 9 of the Control Order, 2004 and in sub-clause 9(2)(c) substituted the following :

> "(2)(c)Fair price shop shall be allotted to only those Co-operative society which is constituted with the object of distributing or selling essential commodities to its member and to other people in the area.
>
> Ordinarily one fair price shop shall be allotted to any agency for its area of operation but to ensure regular supplies of essential commodities to ration cardholders, authorized officer may allot more than one fair price shop to any agency by assigning specific reason, but in any case the number will not exceed three fair price shops."

30) Hon'ble the Apex Court in the case of **District Collector and another vs. B. Suresh and others** reported in **(1999) 5 SCC 612**, held thus :

> "A. Essential commodities – A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 – Fair price shop dealers appointed under the Order, held, could not claim a right to be notified when State Govt. decided to bifurcate the shops and reduce the number of cards – Their licenses had not been cancelled and no right had been violated – High Court erred in holding that State had to give such dealers prior notice of the said policy decision – Constitution of India, Art. 19(1)(g) – Essential Commodities Act, 1955, S.3.

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> **B.** Administrative Law – Administrative action – Policy – Where as a policy decision the Govt. decided to bifurcate fair price shops and reduce the number of ration cards each could handle, held, there was no violation of right to trade or any other right of the F.P.S. dealers – Constitution of India, Art. 19(1)(g)."

31) Here in the instant case also creating ceiling on a society amounts to reduce number of purchasers and in order to distribution of PDS to public at large if State has decided to impose a ceiling of three shops by amendment in the order that does not appear to be unreasonable or against the public policy or is against Article 19(1)(g) of the Constitution, therefore, ceiling imposed by making amendment in the order is not ultra vires or against the constitutional provisions.

32) Learned counsel for the petitioners further contended that this Court while rendering judgment in the case of **Raghuveer Singh Gond (supra)** has declared some of the provisions of Order, 2004 as ultra vires and also issued some directions, but without adhering to those the impugned amendment has been made, therefore, the amendment is in disobedience of the above judgment as such ultra vires. On the other hand, learned counsel for the State contended that legislature has amended the law under its legislative competence.

33) For proper appreciation of the contentions raised by both the parties, it is necessary to extract the order and directions passed by this Court in the case of **Raghuveer Singh Gond (supra)** and the amendment incorporated by the State in Scheme, 2004. Accordingly, para 44 of the above judgment and amendment are quoted below :

Para 44 of judgment rendered in the case of **Raghuveer Singh Gond (supra)**

25)

"In the result, we hold that :-

(i) the provisions of Clause 9(1) of the Order 2004 that fair price shops run by private persons shall not be continued and within six months from the commencement of the Order, fair price shops run by private persons shall be cancelled are not discriminatory and are not violative of Article 14 of the Constitution.

(ii) the contract between the petitioners who are private persons and the State Government in so far as it provides for running fair price shops by the petitioners who are private persons have become unlawful after the expiry of six months' period from the date of enforcement of the Order 2004 and have to be cancelled.

(iii) the provisions of sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 in so far as they provide that Consumer Co-operatives which are not registered under the Chhattisgarh Co-operative Societies Act, 1960 or which are registered after 1st November, 2000 will not be allotted fair price shops are ultra vires Article 14 of the Constitution.

(iv) the provision in sub-clauses (3) and (4) of Clause 9 of the Order 2004 for allotment of fair price shops to Primary Credit Co-operative Societies is ultra vires the Chhattisgarh Co-operative Societies Act, 1960 and only those out of "Other Co-operative Societies" can be allotted fair price shops under the Order 2004 which are permitted under the Chhattisgarh Co-operative Societies Act, 1960 or the Chhattisgarh Swayatya Sahkarita Adhiniyam, 1960 to run fair price shops.

(v) Co-operative Societies which have been running fair price shops prior to the Order 2004 will continue to run the fair price shops in terms of the agreement between the Co-operative Societies and the State Government for the full period for which the agreement has been made and allotment made in their favour can be cancelled only in terms of the said agreement.

(vi) the provisions in sub clauses (3) and (4) of Clause 9 of the Order 2004 for allotting fair price shops to LAMPS, Gram Panchayats, Women's Self Help Groups and Forest Protection Committees are valid, but the

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provisions in the said sub clauses (3) and (4) of Clause 9 of the Order 2004 providing for reservation and priority in favour of some of the specified agencies in the matter of allotment of fair price shops are ultra vires Article 14 of the Constitution.

(vii) the agencies specified in the Order 2004 are to be considered for allotment of fair price shops without any priority or reservation in favour of any category of specified agencies and the guidelines to be followed for making the allotment of fair price shops as indicated in Section 3 of the Act and the Order 2004 is that fair price shop would be allotted to an agency specified in the Order 2004 which can best distribute essential commodities to the ration card holders at fair prices in any particular area.

(viii) sub clause (3)(c) of Clause 9 in so far as it provides for appointment of all sales persons in the fair price shops operating in ITDP areas from BPL families of local tribal communities is ultra vires Article 14 of the Constitution.

(ix) sub clause (7) of Clause 9 of the Order 2004 in so far as it provides for appointment of sales persons in fair price shops in other areas only from among Scheduled Castes and Other Backward Castes is ultra vires Article 14 of the Constitution.

The writ petitions are disposed of with the aforesaid declarations and directions and the interim orders passed by the Court stand vacated. Considering the facts and circumstances of the case, however, the parties shall bear their own cost."

Notification dated 21-3-2006 issued by the State Government :

"Raipur, the 21st March, 2006

NOTIFICATION

No. F 13-8/Food/2004/29.—In exercise of the power conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955) read with the Public Distribution System (Control) Order No.G.S.R.630(E) dated 31-8-2001 issued by Government of India, Ministry of Consumer Affairs, Food and Public Distribution, the state government hereby makes the following amendment in Chhattisgarh Public Distribution System (Control) Order, 2004, namely :-

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AMENDMENTS

In the said order.---

1. For sub-clause (1), of clause-9, the following sub-clause shall be substituted, namely :--

"(1) Fair Price Shop run by Large Aadimjati Multipurpose Co-operative Societies (LAMPS), Primary credit co-operative societies, forest protection committees, self help groups, gram panchayats and other co-operative societies shall be continued but not run by the private persons subject to the conditions of other provisions of the Chhattisgarh Public District System (Control) Order, 2004. Within six months from commencement of this Order, Fair Price Shops run by the private persons shall be cancelled and allotted to the specified agencies mentioned in sub rule (3) and (4) of rule 9."

2. For sub-clause (2), of clause-9, the following sub-clause shall be substituted, namely :--

"(2) (a) In district headquarters Fair Price Shops shall be allotted by Food Controller/Food Officer on approval of Collector and in remaining places of District, by sub divisional officer of sub division on approval of Collector.

(b) In areas where more than one primary credit co-operative societies exists, allocation shall be made on the recommendations of the Deputy Registrar/ Assistant Registrar of District.

Recommendations shall be on the basis of economic status, ability to supply the foodgrain and other essential commodities to ration cardholders regularly, and such other relevant factors, which may be determined by the State Government from time to time.

(c) Fair price shop shall be allotted to only those Co-operative society which is constituted with the object of distributing or selling essential commodities to its member and to other people in the area.

Ordinarily one fair price shop shall be allotted to any agency for its area of operation but to ensure regular supplies of essential commodities to ration cardholders, authorized officer may allot more than one fair price shop to any agency by assigning specific reason, but in any case the number will not exceed three fair price shops.

(d) For allotment of Fair Price Shop an advertisement shall be published in local newspapers and information of it shall be given to concerned urban local bodies and Gram Panchayat compulsorily."

3. For sub-clause (a) of sub-clause (3), of clause-9, the following sub-clause shall be substituted, namely :--

"(a) Allotment of Fair Price Shops to agencies by authorized officer shall be done only to following :

(i) Large Aadimjati Multipurpose Co-operative Societies (LAMPS).
(ii) Gram Panchayats.
(iii) Women's Self help groups.
(iv) Forest Protection Committees.
(v) Other Co-operative Societies."

4. Sub-clause (b) of sub-clause (3) of clause-9 shall be omitted.

5. Sub-clause (c) of sub-clause (3) of clause-9 shall be omitted.

6. Sub-clause (d) of sub-clause (3) of clause-9 shall be omitted.

7. For sub-clause (a) of sub-clause (4), of clause-9, the following sub-clause shall be substituted, namely :--

"(a) Allotment of Fair Price Shops to agencies by authorized officer shall be done only to following :

(i) Gram Panchayats.
(ii) Women's Self help groups.
(iii) Primary Agriculture Credit Societies.
(iv) Other Co-operative Societies."

8. Sub-clause (b) of sub-clause (4) of clause-9 shall be omitted.

9. For sub-clause (c) of sub-clause (4), of clause-9, the following sub-clause shall be substituted, namely :--

"(c) Other consumer co-operative societies shall be registered under Chhattisgarh Co-operative Act, 1960 or Chhattisgarh Swayatta Sahakarita Adhiniyam, 1999. The authorized officer of Co-operative department shall do audit of accounts of Fair Price Shops run by other consumer co-operative societies."

10. For sub-clause (5) of clause-9, the following sub-clause shall be substituted, namely :--

"(5) Fair Price Shops shall be allotted to only those other co-operative societies, which is registered on or before 31st May, 2004."

11. Sub-clause (7) of clause-9 shall be omitted.

By order and in the name of the Governor of Chhattisgarh
M.K. RAUT, Secretary"

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34) Hon'ble the Apex Court while rending judgment in the case of **M/s Ujagar Prints and others (II) v. Union of India and others,** reported in **(1989) 3 SCC 488** at paras 65 & 66 observed thus :

> **"65.** There is really no substance in the grievance that the retroactivity imparted to the amendments is violative of Article 19(l)(*g*). A competent legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating in factors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective. If in the light of such validating and curative exercise made by the legislature — granting legislative competence — the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant. (See *Sri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality*).
>
> **66.** Such legislative expedience of validation of laws is of particular significance and utility and is quite often applied, in taxing statutes. It is necessary that the legislature should be able to cure defects in statutes. No individual can acquire a vested right from a defect in a statute and seek a windfall from the legislature's mistakes. Validity of legislations retroactively curing defects in taxing statutes is well recognized and courts, except under extraordinary circumstances, would be reluctant to override the legislative judgment as to the need for and wisdom of the retrospective legislation. In *Empire Industries Limited* v. *Union of India*[1], this Court observed : (SCR p. 327 : SCC p. 342, para-51)
>
> ... not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of government amongst those who benefit from it.
>
> In testing whether a retrospective imposition of a tax operates so harshly as to violate fundamental rights under Article 19(l)(*g*), the factors considered relevant include the context in which retroactivity was contemplated such as whether the law is one of validation of taxing statute struck down by courts for certain defects; the period of such retroactivity, and the degree and extent of any unforeseen or unforeseeable financial burden imposed for the past period etc. Having regard to all the circumstances of

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> the present case, this Court in *Empire Industries case* held that the retroactivity of the amending provisions was not such as to incur any infirmity under Article 19(l)(*g*). We are in respectful agreement with that view."

35) Earlier clauses 9(3) and 9(4) of the Order, 2004 provides allotment of fair price shops to Primary Credit Cooperative Societies and this Court vide order passed in the case of **Raghuveer Singh Gond (supra)** declared allotment of fair price shops to Primary Credit Cooperative Societies ultra vires, although vide amendment dated 21-3-2006 sub-clause (3) and sub-clause (4) of clause 9 have been amended, sub-clause (3) does not make provision for allotment of fair price shop to primary credit cooperative societies and sub-clause (4) also does not reproduce the above nomenclature, but in place of Primary Credit Cooperative Society, Primary Agricultural Credit Cooperative Society has been incorporated. The Act, 1960 defines Primary Agriculture Credit Cooperative Society, which reads as below :

> "**Primary Agriculture Credit Cooperative Society** – means a society organized with the main objective of making credit available for agriculture production and includes a Primary, Service Cooperative Society and Adimjati Sewa Sahakari Samiti."

36) So far as Primary Credit Cooperative Society is concerned, the Act, 1960 does not prescribe any definition. It is evident that Primary Credit Cooperative Societies and Primary Agricultural Credit Cooperative Societies are one and the same and the difference is of nomenclature only, therefore, once this Court has declared allotment of fair price shop to Primary Credit Cooperative Society is ultra vires, amendment changing in nomenclature does not cure the defect or validate allotment of fair price shops in their favour.

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37) Clause 9(1) of the Order 2004 reads as below:

> "9(1) Fair Price Shop run by Large Aadimjati Multipurpose Co-operative Societies (LAMPS), Primary credit co-operative societies, forest protection committees, self help groups, gram panchayats and other co-operative societies shall be continued but not run by the private persons subject to the conditions of other provisions of the Chhattisgarh Public District System (Control) Order, 2004. Within six months from commencement of this Order, Fair Price Shops run by the private persons shall be cancelled and allotted to the specified agencies mentioned in sub rule (3) and (4) of rule 9."

38) This Court in the case of **Raghuveer Singh Gond (supra)** has declared the provisions in sub-clause (3) & (4) of Clause 9 of the Order 2004 for allotment of fair price shops to Primary Credit Co-operative Societies is ultra vires, the Act, 1960 and only those out of other Co-operative Societies can be allotted fair price shops under the Order 2004 which are permitted under the Act, 1960 or Chhattisgarh Swayatta Sahakarita Adhiniyam, 1999 to run fair price shops. The State Government vide notification dated 21-3-2006 substituted sub-clause (2) of Clause 9 by sub-clause (2)(b) of Clause 9. Primary credit cooperative societies were again kept for allocation of the fair price shops. In sub-clause (4)(a) by aforesaid amendment in the category of agency authorized for fair price shops, primary agriculture credit cooperative societies has been introduced. Primary credit cooperative society and the primary agriculture credit cooperative societies are one and same, therefore, again allowing those societies for allotment of fair price shops, is gross disregard of Courts adjudication. That being so all those provisions where primary agriculture credit cooperative societies or primary credit cooperative societies have been authorised for allotment of fair price shops or to continue, are ultra vires.

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39) In the result, we hold that:

- The provisions of sub-clauses (1), (2)(b) and (4)(a)(iii) of Clause 9 (as amended by notification dated 21st March, 2006) of the Order, 2004 whereby the Primary Credit Cooperative Societies or Primary Agriculture Credit Societies have been held to be eligible for allotment of fair price shops is ultra vires to Chhattisgarh Cooperative Societies Act, 1960.
- The policy decision of the State in not allowing the work of lead agencies and running fair price shops together by the same agency is not opposed to public policy and as such is not open to judicial review.
- The policy decision of the State in imposing ceiling of maximum 3 numbers of fair price shops to one agency is not opposed to the public policy and as such is not open to judicial review.
- Pursuant to public policy and Order 2004, circulars issued, orders passed by the State Government or authorities do not call for any intervention.

40) All the writ petitions are disposed of with the aforesaid declarations. In view of the facts and circumstances of these cases parties are directed to bear their own costs. Security deposit, if any, shall be refunded in accordance with the rules.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge

Raju/Gowri